

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AUTOGERMANA, INC.,

Plaintiffs,

v.

BMW OF NORTH AMERICA, INC.;
BMW OF NORTH AMERICA, LLC,

Defendant.

CIVIL NO. 12 -1542 (BJM)

**DECLARATION UNDER PENALTY OF PERJURY IN SUPPORT OF BMW OF NORTH
AMERICA, LLC'S STATEMENT OF UNCONTESTED MATERIAL FACTS**

I, Karen Oplinger, hereby state and declare as follows:

1. I am the Senior Retailer Process and Systems Specialist, Center Development department, and as such am authorized to make this declaration on behalf of BMW of North America, LLC ("BMW NA") and have personal knowledge of the following.
2. BMW NA has in its files a Car Center Agreement with an effective date of April 1, 2006 signed by Autogermana, Inc. and BMW NA on August 24, 2006 (the "2006 Car Center Agreement").
3. The above mentioned Agreement was subject to an Addendum titled "BMW of North America, LLC Car Center Agreement Standard Provisions."
4. The Car Center Agreement Standard Provisions dated October 28, 2005 were applicable to the Car Center Agreements signed during 2006.
5. The document attached as Exhibit 1 hereto is a true and exact copy of the Car Center Agreement Standard Provisions dated October 28, 2005 as it is kept in the ordinary course of BMW NA's business and which was marked by BMW NA's lawyers as BMW NA 7737-7797.

SWORN STATEMENT PURSUANT TO 28 U.S.C. § 1746(1)

I, Karen Oplinger, certify under penalty of perjury under the Laws of the United States of America that the foregoing declaration is true and correct.

Executed in Woodcliff Lake, New Jersey, this 15th of November, 2013.

A handwritten signature in blue ink, reading "Karen Oplinger", is written over a horizontal line.

Karen Oplinger

**BMW OF NORTH AMERICA, LLC
CAR CENTER AGREEMENT
STANDARD PROVISIONS**

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PARAGRAPH 1 - DEFINITIONS

The following definitions shall be used in the Car Center Agreement and have the following meanings:

BMW

(a) "BMW" shall mean Bayerische Motoren Werke AG, a company organized and existing under and by virtue of the laws of Germany, having its principal place of business in Munich, Germany.

BMW Car Centers

(b) "BMW Car Centers", "BMW Centers", "Car Centers", or "Centers" shall mean all of the authorized BMW centers which are signatories to a BMW Car Center Agreement with BMW NA.

BMW Center Car Operations

(c) "BMW Center Car Operations", "BMW Center Operations", "BMW Car Operations", or "Car Operations" shall mean all activities of the Center relating to the promotion and sale of BMW Products, the Supply of Original BMW Parts, customer service for BMW Products, and/or all other operations of Center governed by this Agreement, such as sales of certified pre-owned BMW Vehicles.

BMW Forum

(d) "BMW Forum" or "Dealer Forum" shall mean the elected representatives of the BMW centers which perform the responsibilities set forth in Article E of this Center Agreement.

BMW Group

(e) "BMW Group" shall mean the umbrella term for collectively identifying the operations, businesses, and/or activities of Bayerische Motoren Werke AG, its subsidiaries, their affiliates, and related entities throughout the world, both within and outside the automotive industry. The BMW Group is represented by many different legal entities, including, but not limited to, BMW of North America, LLC and its affiliates.

BMW NA

(f) "BMW NA" shall mean BMW of North America, LLC, a limited liability company organized under the laws of the State of Delaware, the exclusive importer and distributor of BMW Products in the United States.

BMW NA Car Center Agreement

(g) "BMW NA Car Center Agreement", "BMW NA Car Dealer Agreement", "BMW Car Center Agreement", "BMW Car Dealer Agreement", "Car Center Agreement", "Car Dealer Agreement", "Center Agreement", "Dealer Agreement", or "Agreement" shall have the same meaning as set forth in Article B of this Agreement.

BMW Products

(h) "BMW Products" shall mean BMW Vehicles and Original BMW Parts.

BMW SAV Operations

(i) "BMW SAV Operations" and "SAV Operations" shall mean, if and only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement, the sales and service activities for the BMW Sports Activity Vehicle line-make, which are being operated by the Center under the separate and distinct SAV Center Agreement.

BMW Vehicle(s)

(j) "BMW Vehicle(s)" shall mean new passenger cars of the BMW brand manufactured by BMW or one of its manufacturing subsidiaries and sold by BMW NA. The BMW brand does not include the MINI or ROLLS-ROYCE brands of the BMW Group or vehicles badged with MINI or ROLLS-ROYCE trademarks. The only new vehicles authorized to be sold or serviced under this agreement are BMW passenger cars. BMW Sports Activity Vehicles are light trucks that are not authorized to be sold or serviced under this Agreement and are not included in the definition of BMW Vehicle(s) hereunder. BMW SAVs are only authorized to be sold and serviced under a distinct and separate agreement.

Center

(k) "Center" or "BMW Center" shall mean a dealer authorized to sell and service BMW Products as appointed by BMW NA pursuant to this Agreement. The term "center" or "BMW center", without a capital "C", shall mean all BMW dealerships (other than BMW motorcycle dealerships) whether or not they are authorized to sell and service BMW Products under this Agreement.

Center Facility

(l) "Center Facility", including its plural and possessive forms, shall mean the land and building(s) which constitute the authorized location established in accordance with the provisions of Article D of the Center

Agreement for the conduct of the BMW Center Car Operations.

Center Operating Requirements

(m) "Center Operating Requirements" shall mean the BMW Product, Center Facility, Corporate Identity, Personnel, Training, Financial, Equipment, Special Tool, Certified Pre-Owned Vehicle, Parts, and Demonstrator Requirements for a Center's Car Operations and SAV Operations (if any only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement) published by BMW NA, as amended, canceled, or superseded from time to time by BMW NA following review by the BMW Forum.

Center Operating Requirements Addendum

(n) "Center Operating Requirements Addendum" and "Operating Requirements Addendum" shall mean the BMW Product, Center Facility, Corporate Identity, Personnel, Training, Financial, Equipment, Special Tool, Certified Pre-Owned Vehicle, Parts, and Demonstrator Requirements applicable to Center, as issued, amended, canceled, or superseded from time to time by BMW NA following review with Center.

Center Operating System

(o) "Center Operating System" and "Center Operating Guide" shall mean guidelines and recommendations published by BMW NA to assist Center in complying with Center Operating Requirements.

Center Operator

(p) "Center Operator" shall mean the person named in Article C of the Center Agreement as the person in charge of the BMW Center Operations with authority to make all operating decisions on behalf of the Center with respect to the BMW Center Operations and is the person upon whom BMW NA is relying to represent BMW Products and to act on the Center's behalf, as well as any person who succeeds to such position in accordance with this Agreement.

Center's Officers

(q) "Center's Officers" or "Center Officers" shall mean all the persons named in Article C of the Center Agreement as officers of Center, as well as any other person who succeeds to any such executive and/or managerial position in the Center in accordance with the Agreement.

Center's Owners

(r) "Center's Owners" or "Center Owners" shall mean all the persons named in Article C of the Center Agreement as the beneficial and record owners of the Center, as well as any other person who acquires or succeeds to any beneficial interest or record ownership of the Center in accordance with the Agreement.

Dealer and Dealership

(s) "Dealer" and "Dealership" shall mean Center.

General Manager

(t) "General Manager" shall mean the person named in Article C of the Center Agreement as the person in charge of its BMW Car Operations in the absence of the Center Operator, as well as any person who succeeds to such position in accordance with this Agreement.

**Improvement
Addendum**

(u) "Improvement Addendum" shall mean the Addendum to this Center Agreement which lists the outstanding obligations of the Center which must be met to ensure the continuation of this Agreement under Article H of this Agreement.

Net Purchase Price

(v) "Net Purchase Price" shall mean the actual price at which Center purchased the certain BMW Product from BMW NA, which price shall include the addition or deduction of any and all rebates, refunds, credit allowances, discounts, and other payments or adjustments made by BMW NA relative to such BMW Product. "Net Purchase Price" shall not include payments or adjustments in connection with Center advertising association activities.

Original BMW Parts

(w) "Original BMW Parts" shall mean (i) any genuine parts, accessories, and equipment for BMW Vehicles manufactured by or on behalf of and/or sold by BMW and/or BMW NA and/or bearing the authorized trademarks of BMW, which parts, accessories and equipment usually are described as "Original" in packaging; and (ii) any equipment designed for use in BMW Center Operations (including special BMW tools) and any non-automotive accessories and other equipment, including aftersales, lifestyle, and gift items bearing the trademarks of BMW, which are supplied to Center by or on behalf of BMW NA.

Primary Market Area

(x) "Primary Market Area" shall mean the area designated by BMW NA in which the Center is expected to focus its activities under this Center Agreement. Evaluation of the Center's performance shall be primarily based upon the Center's activities in its Primary Market Area.

Sports Activity Vehicles

(y) "Sports Activity Vehicles", "Sports Activity Vehicle", "SAVs", or "SAV" shall mean BMW light trucks, which are not BMW Vehicles under this Agreement.

United States

(z) "United States" shall mean the 50 United States, the District of Columbia, and the Commonwealth of Puerto Rico.

PARAGRAPH 2 - BASIC OBLIGATIONS OF BMW NA

Supply of BMW Products to Center

(a) BMW NA agrees to sell and deliver BMW Products to Center in accordance with this Agreement and the ability of the Center to store, display, sell, and service BMW Products, as reflected in its Center Operating Requirements Addendum. BMW NA shall have no obligation to supply and Center shall not be entitled to receive BMW Products which exceed the Center's ability to store, display, sell, or service BMW Products as evidenced by its Center Operating Requirements Addendum.

Assistance to Center

(b) BMW NA will assist Center in Center's BMW Car Operations through such means and upon such terms and conditions as BMW NA considers necessary and appropriate, including, among other things:

- (1) Sales, technical, and process training, delivered in person or electronically, prior to introduction of new BMW Vehicles or on an ongoing basis;
- (2) Sales, service, and parts literature and other printed materials relating to BMW Products;
- (3) National advertising campaigns for BMW Vehicles;
- (4) Periodic suggestions and evaluations to assist Center in the conduct of its BMW Operations; and
- (5) Technical Assistance Hotline and Parts Telephone Support.

Allocation of Vehicles

(c) BMW NA agrees to sell and deliver BMW Products to Center in accordance with the provisions of this Agreement:

- (1) In making such sales and deliveries, BMW NA will consider Center's preferences, as well as its compliance with the resale and use restrictions of the Center Agreement, and will endeavor to make a fair and equitable allocation and distribution of the BMW Products available to it among its BMW Centers. BMW NA reserves the right to reduce allocation of BMW Vehicles to Centers which do not comply with the terms and conditions of the Center Agreement or the Center Operating Requirements Addendum;
- (2) Center recognizes the possibility that from time to time BMW Products may not be available in sufficient quantities. In such event, Center

agrees that BMW NA, in the exercise of its business judgment, may determine the method and manner of the allocation of BMW Products between Center and BMW NA's other Centers. Upon Center's written request, BMW NA agrees to provide Center with an explanation of the method used to distribute such BMW Products; and

- (3) Center recognizes that when introducing new BMW Products, BMW NA may require certain prerequisites be in place at the BMW Center, i.e., training, equipment, tools, parts, displays, and customer information, prior to BMW NA distributing such BMW Products to the Center. Such prerequisites shall help ensure customer satisfaction and product acceptance in the market. Center agrees that its failure to meet the prerequisites will delay the distribution of new BMW Products to Center until the prerequisites are met.

PARAGRAPH 3 - BASIC OBLIGATIONS OF CENTER

**BMW Sales, Service,
and Parts Supply**

(a) Center assumes the responsibility for the promotion and sale of BMW Products, the supply of Original BMW Parts, and customer service for BMW Products.

Conduct of Business

(b) In the conduct of its business, Center will:

- (1) Safeguard and promote the reputation of BMW Products, the trademarks of BMW, and the BMW brand;
- (2) Refrain from negligent or willful conduct which may be harmful to the reputation or to the marketing of BMW Products or inconsistent with the public interest;
- (3) Refrain from all deceptive, misleading, or unethical practices; and
- (4) Comply with all applicable local, state, and federal laws.

**Compliance with Center
Operating
Requirements and
Standards for BMW
Centers**

(c) Center, recognizing that its responsibilities under this Agreement demand the most effective use of its available facilities, capital, and personnel, agrees to comply with its Center Operating Requirements Addendum. Center shall review said Addendum with BMW NA representatives at the Retail Business Plan Review, satisfy outstanding obligations under its Improvement Addendum, if applicable, and comply with all reasonable standards established by BMW NA from time to time relating to Center's BMW Car Operations.

**Issuance of
Improvement
Addendum**

(d) BMW NA will notify Center in writing if Center fails to comply with any obligation, responsibility, or requirement under the Center Agreement or the Center Operating Requirements Addendum ("Deficiency").

- (1) If Center fails to remedy the Deficiency following notice, BMW NA will issue to Center an Improvement Addendum or amend an existing Improvement Addendum, listing the Deficiency(s) and providing Center a reasonable date by which the Center must satisfy the Deficiency(s).
- (2) Should Center reasonably request an extension of time in writing to comply with an Improvement Addendum, a justified request for

extension will not be unreasonably withheld; however, under no circumstances is BMW NA obligated to grant more than two extensions.

- (3) Center's failure to satisfy the Deficiency(s) will jeopardize the Center's ability to renew the Center Agreement and could subject Center to early termination of this Agreement.
- (4) An Improvement Addendum will be canceled once Center remedies the Deficiency(s).
- (5) An Improvement Addendum may be superseded by BMW NA at any time to reflect a Center's progress toward satisfaction of a Center's Deficiency(s).

PARAGRAPH 4 - GENERAL REQUIREMENTS FOR CENTER'S CAR OPERATIONS

Center Operator

(a) Center agrees that the Center Operator hereunder shall be the same person as the Center Operator under the Center's BMW SAV Center Agreement, if and only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement.

Business Hours

(b) Throughout the term of this Agreement, the Center Facility shall be operated during, and for not less than, the customary business hours of the trade in the community or locality in which Center is located. When necessary to accommodate customers' needs, however, Center shall extend its regular business hours.

Signs and Pylons

(c) Subject to local requirements, Center agrees to display conspicuously at and around the Center Facility such BMW approved signs and pylons as BMW NA shall reasonably require.

**Center's Corporate and
Trade Name**

(d) Center agrees that its corporate name and its trade name (also known as the Center's dba) for its BMW Center Car Operations shall be the same as for its BMW SAV Operations and must comply with all applicable BMW NA policies, procedures, programs, and guidelines related thereto.

**Exclusive Ownership of
BMW Trademarks**

(e) Center acknowledges BMW's exclusive ownership, and the validity, of the BMW trademarks (including, without limitation, the BMW logo), both registered and at common law, and shall not contest the same during the term of the Agreement or at any time thereafter. Center further acknowledges that the BMW trademarks are famous and highly distinctive throughout the United States and the world, and that the BMW trademarks have achieved the highest degree of recognition within the automotive industry and other related industries throughout the United States and the world. Center and BMW NA agree to cooperate with each other in preventing any acts of trademark infringement, dilution, or unfair competition with respect to any BMW trademark, but BMW (or BMW NA, as BMW's agent with respect to trademark matters) shall have sole control

over all actions and legal proceedings to suppress infringement, dilution, or any act of unfair competition with respect to any BMW trademark. Center acknowledges, and shall not contest, BMW NA's right and authority to bring any action for infringement, dilution, or unfair competition with respect to any BMW trademark.

Use of BMW

Trademarks by Center

(f) BMW NA grants Center a non-exclusive license to use the BMW trademarks subject to the terms and conditions of this Agreement, including, but not limited to, BMW and BMW NA trademark policies and guidelines. Center agrees that it will use the trademarks solely in connection with the promotion and sale of BMW Products and consumer service for BMW Products only in such manner, at such location, to such extent, and for such purposes as BMW NA may specify from time to time. No BMW trademark may be used except in the color, size, form, and style approved by BMW NA. Moreover, without the express prior written consent of BMW NA, Center shall not use any BMW trademark (including the letters "BMW") as part of its corporate business name. Center shall promptly change or discontinue its use of any BMW trademark upon BMW NA's request. Center agrees that the sole source and origin of BMW Products is BMW NA and BMW. Center shall not use the BMW trademarks in any manner which may tend to cause a likelihood of confusion concerning the source or origin of BMW Products. Center shall not use the BMW trademarks in any manner which is likely to cause confusion among the public, deceive or mislead the public, or impair the goodwill of BMW NA or BMW Products. Without BMW NA's prior written consent, Center shall not use BMW trademarks in connection with, or associated with, any other trademark or brand. In the event Center desires to utilize the BMW trademarks in any material, including signage or advertisements, which also contains reference to another line or automotive make, Center agrees to provide BMW NA with thirty (30) days prior written notice of such use. BMW NA shall have the sole discretion to grant or deny approval for such use of the BMW trademarks. Center acknowledges that BMW NA shall be irreparably harmed by any breach by Center of any provision of this Agreement concerning the use of the BMW trademarks. Center acknowledges that BMW or BMW NA may, at their discretion, terminate this license or BMW NA may terminate this Agreement for any violation of BMW or BMW NA trademark policies or guidelines or the breach of this provision or other related provisions in this Agreement. Center agrees to

pay all costs, fees, and expenses, including attorneys fees, of BMW NA or BMW associated with or arising from any legal claim or proceeding for the enforcement of any provision of this Agreement concerning the use of the BMW trademarks or the BMW brand.

**Center Web Sites and
Internet Use**

(g) Among other purposes, BMW NA will use its Internet web site(s) to provide sales leads to Centers, to facilitate sales, and to facilitate the flow of BMW Product and sales information among BMW NA, BMW Centers, and consumers. Center may maintain a world wide web site or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with the Center's business; provided, however, that any such activities are in compliance with the law and any applicable BMW NA Internet or web site policies that exist or are subsequently developed. Center shall not use any BMW trademarks on the site in a manner inconsistent with Paragraph 4 of this Agreement or without BMW NA's prior written authorization or in a manner that is not acceptable to BMW NA. Furthermore, Center may not post or otherwise release BMW, BMW NA, or BMW Group proprietary, confidential, or copyrighted material, information, or documents on or through its web site(s), any third party web-site(s), the Internet, or any other medium without the express prior written approval of BMW, BMW NA, and/or the BMW Group. Center also agrees to include on its web site information BMW NA requires in the manner and form selected by BMW NA. Center further agrees to list a link on its web site to <http://www.bmwusa.com>. If Center is requested to provide a link to additional web sites by BMW NA in writing, Center shall add such links to its web site. In addition, Center agrees to obtain BMW NA's prior written approval for any Internet domain name Center may use or intend to use and/or home page address. Finally, Center agrees that it shall be responsible for the activities and actions it undertakes on the Internet and at its web site.

**Sales of Certified Pre-
Owned and Other Pre-
Owned BMW Vehicles**

(h) Center shall not use any BMW trademark in connection with the sale of certified or non-certified pre-owned BMWs unless the Center fully complies with all requirements of BMW NA as to the standards, practices, and facilities for the sale of pre-owned BMWs under the BMW trademarks. Center agrees to adhere to the terms and conditions associated with the sales and service activities for certified pre-owned BMWs and to all policies, procedures, programs, and guidelines established and updated

from time to time by BMW NA for certified pre-owned BMWs. Furthermore, Center shall not certify any BMWs which do not meet the requirements for certification and shall not submit claims, information, or reports to BMW NA identifying as certified, vehicles that do not meet certification requirements or vehicles that have not been certified.

Insurance

(i) Center shall maintain comprehensive and excess liability insurance policies in an amount sufficient to meet all reasonably anticipated contingencies, including legal judgments entered against Center. In no event shall the aggregate value of the policies be less than Five Million Dollars (\$5,000,000.00). The policies must be issued by an insurance company with an "A-" or better rating by A.M. Best or a similar rating agency acceptable to BMW NA. Center must provide BMW NA with copies of such policies upon request and a certificate of insurance each time the policies are renewed.

Training

(j) Center agrees that its personnel will be trained in such special training courses as may be offered from time to time by BMW NA. Center shall require its personnel to meet with BMW NA personnel in the dealership or at other appropriate locations for the purposes of training and to use training materials as may be suggested from time to time by BMW NA.

Advertising

(k) Center agrees to advertise BMW Products and customer service for BMW Products in accordance with the standards set forth in Paragraph 3(b) and such other reasonable policies, standards, and guidelines as BMW NA may establish from time to time. Such advertising shall include, among other things, listings in approved web sites and local classified telephone directories identifying Center as an authorized dealer in BMW Products.

Both BMW NA and Center recognize the need of maintaining uniformly high standards of ethical advertising of a quality and dignity consistent with the reputation of BMW Products in order to maintain public confidence and respect in Center, BMW NA, and BMW Products. Accordingly, Center agrees not to publish or cause to be published any advertising in any media whatsoever relating to BMW Products and customer service for BMW Products which is likely to deceive and/or mislead the public or to impair the goodwill of BMW NA or BMW Products. BMW NA reserves the right to

require Center to cease any advertising inconsistent with this provision including the right to prohibit Center from using BMW trademarks in advertising.

**Center Submissions to
BMWNA**

(l) Center shall not submit false or fraudulent claims, reports, statements, or information to BMW NA.

Compliance with Laws

(m) Center shall comply with all applicable local, state, and federal laws and regulations, including, but not limited to, laws and regulations requiring licensing and/or registration. Center agrees to disclose information as BMW NA may reasonably request with respect to the foregoing.

**Compliance with this
Agreement and BMW
NA Policies,
Procedures, Programs,
and Guidelines**

(n) Center shall comply with the terms and conditions of this Agreement and all existing and subsequently developed or amended BMW NA policies, procedures, programs, and guidelines.

PARAGRAPH 5 - CENTER'S SALES OF BMW VEHICLES

Sales Promotion

(a) Center shall actively and effectively promote the sale of the full line of authorized BMW Vehicles and shall promote and sell such BMW Vehicles primarily in its Primary Market Area in accordance with the terms and conditions of this Agreement and through such means as reasonably may be required by BMW NA from time to time.

Sales Performance

(b) Within the limitations, if any, resulting from the quantity of BMW Vehicles made available to Center by BMW NA, Center shall achieve the best possible sales performance obtainable for BMW Vehicles. Such sales performance shall be evaluated on the basis of such reasonable and equitable criteria as may be determined from time to time by BMW NA.

Sales Leads

(c) Center shall follow up all sales leads provided to Center by BMW NA (or any of its subsidiaries, affiliated companies, or vendors), whether obtained through BMW NA's web site or otherwise, promptly and courteously within the time periods set forth by BMW NA in writing to Centers or in the Center's Operating Requirements Addendum. Center acknowledges that BMW NA may divert any sales leads not followed up on by a Center within the time periods set forth by BMW NA, in writing to Centers or in the Center's Operating Requirements Addendum, to other Centers.

Demonstrators

(d) For purposes of demonstration, Center shall have available at all times such number of the most current model BMW Vehicles as required pursuant to the Center's Operating Requirements Addendum. Center shall maintain such BMW Vehicles in first-class operating condition at all times.

Strategic Business Plan

(e) Each Center shall develop a strategic business plan with objectives for the following year. The annual strategic business plan will be discussed with and presented to the BMW NA representatives at an annual strategic business plan review. The final strategic business plan, as accepted by BMW NA, shall represent the goals and objectives of Center and contain the action plans developed by Center to achieve those goals and objectives and, in the case of an Improvement Addendum, address the means of

complying with the terms and conditions of this Agreement.

Primary Market Area

(f) BMW NA will assign to Center in writing a geographic area consisting of a collection of zip code areas or census tracts, which shall be the Center's Primary Market Area. The Center's Primary Market Area is the area in which a Center will primarily promote and sell BMW Vehicles. The Center's Primary Market Area will be used to evaluate the Center's performance obligations and objectives under this Agreement. BMW NA may adjust a Center's Primary Market Area at any time and will provide written notice to the Center of any adjustment. Center agrees that it has no right or interest in any Primary Market Area. In assigning or changing the Center's Primary Market Area, BMW NA will exercise its best business judgment based on the facts and circumstances at the time that any assignment or change is made.

Performance Evaluation

(g) Center and BMW NA agree that their primary purpose is to satisfy customers by properly servicing and promoting the sale of BMW Products within Center's Primary Market Area. Center and BMW NA will work together to achieve this purpose.

- (1) Center's compliance with the retail business plan and Center's sales, service, and customer satisfaction performance will be regularly reviewed and evaluated. BMW NA will provide to Center, in writing, its evaluation of Center's performance. Any written comments submitted by Center to BMW NA shall become part of a performance evaluation report.
- (2) BMW NA shall evaluate Center's performance based on, but not limited to:
 - (i) Center's sales of BMW Products in Center's Primary Market Area;
 - (ii) Registrations attributable to Center in its Primary Market Area;
 - (iii) The sales and registrations of competitive passenger cars in Center's Primary Market Area;
 - (iv) Feedback from Center's customers measured by the results of the customer satisfaction surveys provided to Center by BMW NA;
 - (v) The trend of Center's performance over a reasonable period of

time;

(vi) Significant local conditions that may have affected Center's performance;

(vii) The general vehicle purchasing trends of the public; and

(viii) Center's compliance with its Center Operating Requirements Addendum, its retail business plan objectives, and Best Practices.

**Down Payments and
Trade-Ins**

(h) Payments received from customers, whether in money or in kind, which are to be applied towards the subsequent purchase of a new BMW Vehicle, shall be held for such customers in accordance with applicable law until such time as the transaction with respect to which such payments were received is consummated or terminated.

Consumer Disclosures

(i) Center shall deliver to purchasers of BMW Vehicles an itemized invoice and disclose any other information or give any notice provided by BMW NA intended for consumers or required by law.

PARAGRAPH 6 - CUSTOMER SERVICE

Scope and Quality

(a) Center shall provide the best possible customer service for all owners of BMW Vehicles whether or not the BMW Vehicle was sold by Center and shall promote its customer service and the sale of Original BMW Parts. Center shall not engage in any service practice with respect to any BMW Products if BMW NA has reasonably objected to the nature or quality of such practice or the practice is detrimental to customers or inconsistent with the purposes of this Agreement.

Disclosure and Use of Original BMW Parts

(b)(1) Center shall not use any parts other than Original BMW Parts or parts expressly approved (e.g., authorized remanufactured parts) by BMW NA in the performance of warranty service in connection with the BMW New Vehicle Limited Warranty, parts warranties, and/or other BMW warranties.

(2) Center recognizes that its customers have a right to expect that any product that they purchase from Center meets the high quality standards associated with BMW Products. In order to avoid confusion and minimize potential customer dissatisfaction, in any case where Center sells for use in the repair of any BMW Product any parts which are not Original BMW Parts or parts approved by BMW or BMW NA, Center shall disclose to the customer that such parts are not Original BMW Parts or parts approved by BMW or BMW NA, and, consequently, that such parts are not warranted by BMW NA. Such disclosure shall be in writing, conspicuous, and set forth on the parts invoice, service, or repair order. Center will also, by appropriate written notice, advise the customer of the source of such parts and the extent of any warranty given by the supplier or manufacturer of such parts.

(3) Center shall not represent in any manner, sell or offer for sale as new, Original BMW Parts or parts approved (e.g., authorized remanufactured parts) by BMW or BMW NA, any parts which are not in fact new, Original BMW Parts or parts approved by BMW or BMW NA.

Pre-Delivery Inspection

(c) Before delivery to the customer, Center shall inspect, prepare, and condition each new BMW Vehicle in accordance with quality certification and other pre-delivery inspection procedures furnished from time to time by BMW NA to Center. Evidence of satisfactory completion will be

determined at the discretion of BMW NA, through customer responses to surveys or inspection documents maintained in the Center's vehicle history file.

**BMW Service and
Warranty Information
Booklet and BMW
Owner's Manual**

(d) Upon delivery to a customer of a new BMW Vehicle, Center will also deliver to the customer the BMW Service and Warranty Information booklet supplied by BMW NA for such BMW Vehicle, properly completed and stamped with Center's corporate or business name, the customer warranty information, including notification of any laws, rules, or regulations addressed in subparagraph (e) below when required by applicable state law, and the appropriate BMW Owner's Manual. In addition, Center shall have copies of applicable warranty information on display and ready for customer use.

**Compliance with
Consumer Protection
Statutes, Policies,
Procedures, and
Guidelines**

(e) Center acknowledges the existence and applicability of various "repair or replace" laws, damage disclosure laws, other consumer protection laws, rules, and regulations, and BMW NA disclosure policies, procedures, and guidelines. Center agrees to comply fully with the requirements of such laws, rules, regulations, policies, procedures, and guidelines, including, but not limited to, delivering all required disclosures, booklets, and manuals to consumers, and Center shall take no action which adversely affects BMW NA's rights and duties under these laws, rules, and regulations.

Moreover, Center agrees to use its best efforts to notify BMW NA promptly in writing of all situations in which "repair or replace" laws are or may be applicable. Center further agrees to take such other action as BMW NA may reasonably require.

PARAGRAPH 7 - CENTER'S RECORDS AND REPORTS AND ACCESS TO CENTER'S PREMISES

Financial Records

(a) Center shall keep accurate and current books of account in accordance with accounting practices reasonably satisfactory to BMW NA so as to enable BMW NA to develop comparative data in order, among other things, to furnish to Center, for Center's benefit, business management assistance.

Management Information Systems Requirements

(b) To facilitate the efficient operation of the BMW passenger car dealer network and the accurate and prompt disclosure to BMW NA of dealership operations and financial information, Center agrees to install and maintain management information system facilities which are compatible with the computer systems, hardware, and software used by BMW NA and comply with the terms of the BMW Information Management Manual.

Financial Statements

(c) Center shall electronically deliver to BMW NA the following:

(1) On or before the tenth (10th) day of each calendar month, on such forms as BMW NA reasonably may require, a financial and operating statement reflecting Center's BMW Car Operations for the preceding month and Center's total BMW Car Operations from the beginning of the calendar year to the end of the preceding month (the statements referenced in this Paragraph shall also reflect the financial and operating results for the Center's BMW SAV Operations, if and only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement); and

(2) Within three and one-half (3-1/2) months after the end of the calendar year, a financial and operating statement for such year. In the event BMW NA so requests in writing, such statement shall be reviewed by a certified public accountant.

Additional Reports

(d) Center will furnish to BMW NA, on such forms and at such times as BMW NA reasonably may require, complete and accurate reports of Center's sales and inventories of new BMW Vehicles, of certified pre-owned BMW Vehicles, of other pre-owned vehicles, and of Original BMW

Parts. Center will also furnish to BMW NA such other reports as BMW NA reasonably may require from time to time. Center shall maintain such records for at least five (5) years.

**Access to Center's
Premises and Records**

(e) Until the expiration or prior termination of this Agreement and thereafter until consummation of all the transactions referred to in Paragraph 14 hereof, BMW NA, through its representatives, employees, and other designees, shall have the right, at all reasonable times during regular business hours, to inspect Center's BMW Car Operations, including the Center's Facility and records and accounts of Center relating to Center's BMW Car Operations. Center shall cooperate fully with, and take all actions necessary to facilitate, such inspections.

Confidentiality

(f) BMW NA will not furnish any financial data submitted to it by Center to any third party unless: 1) authorized by Center; 2) required by law, regulation, order, or judicial, alternate dispute resolution, or administrative process; 3) pertinent to judicial, alternate dispute resolution, or administrative proceedings; or 4) required to generate composite or comparative data for analytical purposes. Center agrees to keep confidential and not disclose, directly or indirectly, information that BMW NA designates as confidential and provides to Center.

PARAGRAPH 8 - CENTER'S PURCHASES OF BMW VEHICLES

Center's Purchase Price (a) BMW NA will sell BMW Vehicles to Center at such prices and upon terms as may be established from time to time by BMW NA. Center shall be responsible for payment of any and all sales taxes, use taxes, excise taxes, and other governmental or municipal charges imposed or levied or based upon the sale of BMW Vehicles by BMW NA to or through Center.

Payment (b) Payment for each BMW Vehicle purchased by Center shall be made in cash at the time of delivery unless the invoice provides otherwise, in which event the terms of the invoice shall govern. Receipt of any check, draft, or other commercial paper shall not constitute payment until BMW NA has received cash in the full amount thereof. In the event of non-payment, Center shall pay all of BMW NA's collection charges, including attorneys fees and costs.

Line of Wholesale Credit (c) During the term of this Agreement, Center shall maintain exclusively for BMW Vehicles an unrestricted line or lines of wholesale credit with a financing institution or institutions satisfactory to BMW NA in amounts as specified in the Center Operating Requirements Addendum.

Shipment to Center (d) BMW NA will endeavor, whenever practicable, to follow Center's requests with regard to route and method of shipment of BMW Vehicles, but BMW NA reserves the right to ship BMW Vehicles purchased by Center hereunder by whatever mode of transportation, by whatever route, and from whatever point BMW NA may select. All shipping charges for BMW Vehicles will be borne by Center.

Claims Processing (e) In order to facilitate the processing of claims for damage against the carrier or carrier's insurer, Center hereby authorizes BMW NA to process, and BMW NA agrees that it will so process at its own cost and expense, all such claims in BMW NA's name, but for Center's account, in such manner and on such basis as BMW NA may reasonably determine. BMW NA shall not, however, be obliged to retain counsel or commence legal proceedings against carrier or carrier's insurer with respect to any such claims. Center

also authorizes BMW NA to settle or compromise any such claims for less than the full amount thereof as BMW NA may in its sole judgment determine without the prior approval of Center.

Immediately upon delivery of any BMW Products to Center, Center shall make a careful inspection of such products and shall note any damage in the BMW Products so delivered on the appropriate carrier delivery forms, which shall be signed by both the representatives of the carrier and the representatives of the Center. Center shall also follow any other pertinent procedures that may be established from time to time by BMW NA and will cooperate with BMW NA in processing any claims. Failure by Center to note any deficiency or damage upon delivery to Center and failure to follow any other pertinent procedures established by BMW NA shall constitute a waiver by Center of BMW NA's obligation to process any claim and Center shall be solely responsible for asserting and processing any such claims against the carrier.

Passing of Risk

(f) All BMW Vehicles sold to Center shall be at Center's risk and peril from the time of delivery at BMW NA's established place of delivery whether to Center, Center's agent, or a common carrier, and during all subsequent transportation. It shall be the obligation of Center to insure against such risks for its benefit and at its expense.

**Repair and Sale of
Damaged BMW
Vehicles**

(g) In the event that any BMW Vehicle sold by BMW NA to Center should become damaged prior to its delivery by Center to a customer, Center shall, applying BMW or BMW NA approved repair practices and procedures, repair fully such damage so that such BMW Vehicle shall be placed in first-class salable condition prior to delivery. Center shall not market any BMW Vehicle if the quality or condition thereof has been reasonably objected to by BMW NA. Center shall comply with all state laws applicable to such sales and shall disclose to the customer all damage and repairs in accordance with applicable state law. Center will also disclose all damage when processing wholesale or retail trades of BMW Vehicles.

**Option to Repurchase
Damaged Vehicles**

(h) In order to protect the integrity of BMW Vehicles and Center's and BMW NA's reputation in the marketplace, Center agrees to notify BMW NA whenever any of Center's new and unused BMW Vehicles are substantially damaged. For the period of ten (10) business days from BMW NA's receipt

of notice from a Center, BMW NA shall have the first option to repurchase from Center such damaged BMW Vehicles at a price equal to the Net Purchase Price originally paid by Center to BMW NA less any monies or other consideration received by Center in connection with or relating to such damaged BMW Vehicles. Center agrees to assign its rights under any insurance contract with respect to such BMW Vehicles to BMW NA. In the event BMW NA exercises its option to repurchase as granted above, BMW NA reserves the right to make any payment hereunder directly to any party having a security interest in the BMW Vehicle being repurchased. BMW NA shall not be liable for any interest expense under this Paragraph 8 on returned vehicles, unless repurchased under this subparagraph (h).

PARAGRAPH 9 - CENTER'S INVENTORY AND PURCHASE OF ORIGINAL BMW PARTS

**Minimum Inventory of
Original BMW Parts**

(a) Center shall acquire and at all times maintain at least a minimum inventory of available Original BMW Parts necessary to satisfy adequately the needs of the market.

Center's Purchase Price

(b) BMW NA shall sell Original BMW Parts to Center at such prices and upon such terms as may be established from time to time by BMW NA. Center is responsible for any and all sales taxes, excise taxes, use taxes, and other governmental or municipal charges imposed or levied or based upon the sale of Original BMW Parts by BMW NA to Center, except federal excise taxes which may be included in the purchase price of BMW NA to Center. In the event of any increase in the prices established by BMW NA for Original BMW Parts, Center will have the right to cancel all orders for Original BMW Parts affected by the increase which are pending and unfilled at the time Center obtains notice of the increase, provided that BMW NA is notified in writing of such cancellation within ten (10) days from the time Center obtains notice of the increase.

Payment

(c) Center's orders for Original BMW Parts will be filled on the basis of payment terms established from time to time by BMW NA for Center's account. Such terms may provide for open account, limited open account, C.O.D., or cash. Center will be invoiced at the time of shipment through the electronic Dealer Communications System. Center shall receive a month-end statement. Center shall render payment for the total amount of the monthly statement in accordance with the terms stated therein. Unless otherwise indicated in writing, full payment is due upon receipt of said statement. In the event of non-payment, Center shall pay all of BMW NA's collection charges, including attorneys fees and costs.

Delivery

(d) Delivery of Original BMW Parts ordered by Center shall be made by common carrier, U.S. mail, or express mail, and if practical, in accordance with Center's specific request. If freight charges are to be paid by BMW NA, the most economical transportation will be selected.

**Claims for Incomplete
Delivery**

(e) All claims for incomplete delivery of Original BMW Parts must be made by Center in writing immediately upon Center's receipt of shipment.

**Return of Defective
Original BMW Parts**

(f) Center shall not sell, offer for sale, or install any Original BMW Parts if the nature or quality thereof has been reasonably objected to by BMW NA. Center may, after receipt of written authorization from BMW NA, return defective Original BMW Parts to BMW NA for credit, together with the original invoice indicating Center's purchase price of such Original BMW Parts. Such Original BMW Parts shall be shipped, shipping charges prepaid, to the destination specified by BMW NA. Center will be reimbursed for shipping charges prepaid by it on authorized returns of defective Original BMW Parts based on the lowest applicable rate of transportation by common carrier.

**Right to Return Original
BMW Parts**

(g) Center will notify BMW NA of any Original BMW Parts ordered by Center in error within sixty (60) days after receipt of shipment. Center may return such Original BMW Parts, no later than sixty (60) days after Center's receipt of specific authorization from BMW NA, for credit, which credit shall be applied to Center's account based on the invoiced price of the returned Original BMW Parts. Such Original BMW Parts shall be returned, shipping charges prepaid, to the destination specified by BMW NA.

Center may also return, after receipt of written authorization from BMW NA, Original BMW Parts shipped to Center due to BMW NA shipping error. Such Original BMW Parts shall be shipped, shipping charges prepaid, to the destination specified by BMW NA and Center shall be credited for such prepaid shipping charges as well as for the invoiced prices of the returned Original BMW Parts.

**Non-Returnable
Materials, Parts, and
Assemblies**

(h) Center will not be entitled to return: (1) any materials which have been acquired or specially fabricated by BMW NA upon Center's order; (2) unlisted Original BMW Parts or assemblies; or (3) any Original BMW Parts or assemblies not purchased by Center from BMW NA.

PARAGRAPH 10 - ADDITIONAL PROVISIONS GOVERNING CENTER'S PURCHASE OF BMW PRODUCTS AND CENTER'S INVENTORIES

Taxes

(a) Center shall provide BMW NA with all of its tax identification numbers. With regard to each purchase of BMW Products, Center represents and warrants that:

- (1) Such BMW Products are being purchased from BMW NA by Center for resale in the ordinary course of Center's business;
- (2) Center has complied with all of the applicable provisions of local and state laws required for the collection and payment by Center of all sales, use, and excise taxes and other governmental or municipal charges applicable to all such resale transactions; and
- (3) Center has furnished to BMW NA all resale certificates or similar documents required to perfect an exemption from any applicable sales and use taxes.

Center shall be responsible for payment of any and all taxes and other governmental or municipal charges imposed or levied in connection with the sale to Center by BMW NA of BMW Products or equipment supplied to Center by BMW NA.

In the event that any BMW Products are put to a taxable use by Center or are in fact purchased by Center for purposes other than resale in the ordinary course of Center's business, Center shall make timely return and payment to the appropriate taxing authorities, as required by Paragraph 8(a), with respect to BMW Vehicles, and Paragraph 9(b), with respect to Original BMW Parts, of all applicable sales, use, and excise taxes, and other governmental or municipal charges imposed or levied or based upon the sale of such BMW Products by BMW NA to Center, and Center shall hold BMW NA harmless from any and all claims and demands which may be made by such taxing authorities against BMW NA with respect thereto.

BMW NA's Purchase

Money Security Interest

(b) In order to assure its prompt and unconditional payment to BMW NA upon the terms and as and when due of any and all indebtedness, obligations, or liabilities of Center to BMW NA for the purchase of BMW

Products ("Obligations"), Center hereby grants, assigns, and transfers to BMW NA a continuing first and senior lien on and security interest in all such BMW Products sold on credit, open account, or limited open account to Center by BMW NA, all accessions and additions thereto, and all proceeds and products of such BMW Products, whether now owned or hereafter acquired as well as a security interest in cash incentives, holdbacks, bonuses, or other BMW NA payables (the "Collateral"). In furtherance thereof and in recognition of BMW NA's status as a secured party having all the rights and remedies of a secured party under Article 9 of the Uniform Commercial Code:

(1) In the event Center is in default of any Obligations or any of the events described in Paragraph 12(b) and (c) of this Agreement shall occur, and at any time thereafter, BMW NA may declare Center in default and may exercise the following rights and remedies, in addition to all other rights and remedies it has as a secured party under the Uniform Commercial Code:

(i) To declare all Obligations of Center to BMW NA immediately due and payable; and

(ii) To require Center to assemble the Collateral and make it available to BMW NA for possession at a place designated by BMW NA which is reasonably convenient to both parties.

(2) With respect to all proceeds of the Collateral, including, without limitation, payments received by Center from a customer upon delivery of any BMW Product constituting Collateral and cash deposits received from a customer in anticipation of a future delivery of a BMW Product constituting Collateral to such customer, Center grants to BMW NA an irrevocable power of attorney to endorse all cash and non-cash proceeds of the Collateral to effect collection thereof, it being understood and intended by Center that such power of attorney is coupled with an interest; and Center shall:

(i) Upon demand by BMW NA, whether or not Center is in default of any Obligations, deposit not later than the business day following receipt, all proceeds of the Collateral or any portion thereof, in a separate bank account designated for that purpose and under the

sole control of BMW NA;

- (ii) Not commingle any proceeds of the Collateral to which BMW NA is entitled with other funds or property of Center until delivery of such proceeds to BMW NA has been completed, it being agreed and understood that the proceeds to which BMW NA is entitled shall be that portion of the proceeds upon sale of a BMW Product constituting Collateral which equals the Obligations with respect to such BMW Product; and
- (iii) Hold any proceeds of the Collateral to which BMW NA is entitled under Paragraph 10(b)(2) hereof separate and apart and upon express trust for BMW NA until such delivery or deposit.
- (3) Center shall hold in trust each deposit of cash received from a customer in anticipation of a future delivery of a BMW Product constituting Collateral to such customer until such delivery is consummated.
- (4) Center shall not sell, pledge, assign, transfer, lease, resell, or otherwise dispose of any type of Collateral herein described or any interest in Collateral except in the ordinary course of Center's business or as may be authorized in writing by BMW NA.
- (5) Center shall execute and deliver promptly to BMW NA one or more financing statements pursuant to the Uniform Commercial Code in the form suitable for filing to perfect a purchase money security interest in the Collateral and which are otherwise satisfactory to BMW NA. Center irrevocably appoints BMW NA as its attorney in fact, to sign and file, in Center's name, financing statements at any time with respect to the Collateral and the proceeds thereof, it being understood and intended by Center that such power of attorney is coupled with an interest.
- (6) The remedies provided in this Paragraph 10(b) shall be in addition to any other rights and remedies provided for in this Agreement or under applicable law.

**Return or Diversion of
BMW Vehicles on
Center's Failure to
Accept**

(c) In the event Center should fail or refuse for any reason (other than an error by BMW NA) to accept any BMW Vehicle delivered to Center's Facility, Center will reimburse BMW NA for all expenses incurred by BMW NA in returning such BMW Vehicle to the original point or in diverting it to another destination, as the case may be; but in no event shall Center be

required to pay BMW NA an amount in excess of the expense of returning such BMW Vehicle to its original point of delivery to Center. Center forfeits any further rights it may have with respect to such rejected BMW Vehicle(s).

**Failure of or Delay in
Delivery**

(d) BMW NA will not be under any liability to Center for failure to deliver or for delay in making delivery if such failure or delay results from any event brought by causes other than willful or grossly negligent conduct of BMW NA, such as, for example, any event in the nature of force majeure, acts of God, acts of any government, foreign or civil wars, riots, interruptions of navigation, shipwrecks, strikes, lockouts, other labor troubles, embargoes, blockades, fires, explosions, sabotage, failures of BMW or of any other supplier of BMW NA to deliver, or delay of BMW or of any other supplier of BMW NA in making delivery.

**Changes in
Specifications**

(e) BMW Products will be delivered by BMW NA to Center in accordance with standards applicable at the time of their manufacture. BMW NA and Center recognize and agree that BMW and/or BMW NA shall have the right, without limitation, at any time and from time to time, to make changes or modifications in the design specifications of BMW Products without notice. BMW NA shall have no obligation to Center to make such change or modification with respect to BMW Products previously delivered to or ordered by Center or to make any refund or other adjustment for any BMW Products previously purchased by Center or being imported, manufactured, or sold, whether or not the price of such BMW Products is affected thereby. No change shall be considered a model year change unless so specified by BMW.

**Changes by Center on
BMW Products and
Compliance with Safety,
Air Pollution, Noise
Control, and Consumer
Warranty Requirements**

(f) Center agrees not to make any modifications or alterations to BMW Vehicles which alters the original engineering and/or operating specifications of the vehicle. BMW NA may request Center to make such changes or refrain from making such changes on BMW Products as may be prescribed from time to time by BMW, and Center agrees to comply promptly with such requests. Center also agrees to take such steps and render such reports in connection with the National Traffic and Motor Vehicle Safety Act of 1966, the Consumer Product Safety Act, the Magnuson-Moss Warranty Act, or any other legislation or regulation

pertaining to safety, air pollution, noise control, or warranties to consumers, as may be required of motor vehicle dealers, distributors, or manufacturers or as BMW or BMW NA may request from time to time, and to comply with all such legislation and regulations in conducting Center's BMW Car Operations. BMW NA will reimburse Center for the reasonable cost of any Original BMW Parts, and labor in accordance with current warranty rates and procedures, which may be used by Center in making changes on BMW Products requested by BMW NA and/or BMW. Center agrees to indemnify and hold harmless BMW and BMW NA from and against any and all claims and liabilities arising from Center's failure or alleged failure to comply, in whole or in part, with any obligation assumed by Center pursuant to this Paragraph. Center will communicate to BMW NA all suggestions with respect to improvements in BMW Products it may have or develop as a result of its experience.

Inventories

(g) Center agrees that, in addition to maintaining at least the minimum inventory of Original BMW Parts required under Paragraph 9(a), Center will acquire, and at all times maintain, such inventory of available BMW Products as is necessary in accordance with the current and reasonably foreseeable volume of Center's business and to further Center's sales activities and to assure satisfactory customer service and supply of Original BMW Parts.

PARAGRAPH 11 - WARRANTY TO CUSTOMERS

BMW Warranties

(a) Each BMW Vehicle supplied by BMW NA will be warranted to the customer by BMW NA in accordance with the New Vehicle Limited Warranty, the Limited Emissions Warranties, and the Limited Warranty against Rust Perforation. Each Original BMW Part supplied by BMW NA will be warranted to the customer by BMW NA in accordance with the Limited Warranty on Original BMW Parts or the Limited Warranty on Original BMW Parts Purchased Over the Counter, as the case may be.

Incorporation of BMW Warranties in Center's Sales

(b) Center agrees to make all sales of BMW Vehicles and Original BMW Parts in such a way that its customers acquire all rights in accordance with the New Vehicle Limited Warranty, the Limited Emissions Warranties, the Limited Warranty against Rust Perforation, the Limited Warranty on Original BMW Parts, or the Limited Warranty on Original BMW Parts Purchased Over the Counter, as the case may be. Center will supply consumers with a copy of such warranties in such fashion as may from time to time be required by BMW NA or by applicable law.

Exclusion of Warranties

(c) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY PROVIDED FOR IN THE NEW VEHICLE LIMITED WARRANTY, THE LIMITED EMISSIONS WARRANTIES, THE LIMITED WARRANTY AGAINST RUST PERFORATION, THE LIMITED WARRANTY ON ORIGINAL BMW PARTS, AND THE LIMITED WARRANTY ON ORIGINAL BMW PARTS SOLD OVER THE COUNTER, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED AND BMW NA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, TO CONSUMERS. THE EXCLUSION ALSO APPLIES TO INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES FOR ANY BREACH OF EXPRESS OR IMPLIED WARRANTY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS, IF ANY, APPLICABLE TO BMW PRODUCTS.

Warranty Policies and Procedures

(d) Center agrees to comply with the provisions of the Warranty Policies and Procedures Manual supplied by BMW NA to Center and any future versions of the Warranty Policies and Procedures Manual applicable to a warranty claim. All such manuals and documents referred to therein are fully incorporated into this Agreement. Center further agrees to follow the procedures established from time to time by BMW NA for the processing and disposition of warranty claims and the return and disposition of Original BMW Parts claimed to be defective. Center will also comply with all requests of BMW NA for the performance of service in response to warranty claims and will maintain detailed records of time and parts consumption as prescribed by BMW NA. Upon complying with such procedures and requests and maintaining such records, Center will be entitled to reimbursement for warranty claims in the amounts for reimbursement specified in the applicable Warranty Policies and Procedures Manual for warranty claims provided that Center has the necessary equipment and qualified service personnel, as specified by BMW NA, to effect necessary warranty repairs. Center must also have documentation in support of its claims and Center acknowledges and agrees that BMW NA may request Center to provide documentation to BMW NA at any time in connection with such claims.

Strict adherence to the procedures established for processing warranty claims is necessary in order for BMW NA to process such claims fairly and expeditiously. BMW NA will be under no obligation with respect to warranty claims not made strictly in accordance with such procedures and in a timely manner. Center's obligation hereunder extends to all BMW Vehicles and BMW Products under warranty presented to Center by a customer, regardless of whether Center sold the BMW Vehicle or BMW Product to such customer.

Center is not authorized to assume or incur any other or additional warranty obligations or liabilities on behalf of either BMW or BMW NA. Any such other or additional obligations assumed or incurred by Center shall be solely the responsibility of Center, including the disclosure of the identity of the supplier or warrantor, the existence of a warranty, and the specific terms and conditions of such warranty to the consumer.

PARAGRAPH 12 - TERMINATION PRIOR TO EXPIRATION DATE AND SUCCESSION

Termination by Center

(a) Center shall have the right to terminate this Agreement at any time by sending notice of such termination to BMW NA, by certified mail, return receipt requested, telegram, or overnight mail service sixty (60) days in advance of the effective date thereof.

Immediate Termination by BMW NA for Cause

(b) Except to the extent a greater notice period is required by any applicable statute, in which case the minimum notice period shall be deemed to be the minimum period required by such law, BMW NA shall have the right to terminate this Agreement for cause, with immediate effect, by sending notice of such termination to Center by certified mail return receipt requested, telegram, or overnight mail service, if any of the following events should occur:

- (1) Any material misrepresentation by any of the persons listed in Article C of the Center Agreement as to any fact relied upon by BMW NA in entering into this Agreement or approving such persons;
- (2) Conviction of Center or of any of the persons listed in Article C of the Center Agreement, or pleading guilty or pleading nolo contendere by any of the foregoing, of any felony or for any material violation of law if BMW NA has reason to believe that such conviction or plea may adversely affect the conduct of Center's BMW Car Operations or would tend to be harmful to BMW, BMW NA, the reputation of BMW Products, or the marketing of BMW Products;
- (3) Submission by Center to BMW NA of false or fraudulent reports, statements, or information, or false or fraudulent claims for reimbursement, refunds, or credits, such as, for example, false or fraudulent warranty claims;
- (4) Grossly negligent or willful conduct on the part of Center or of any of the persons listed in Article C of the Center Agreement that BMW NA determines, in the reasonable exercise of its discretion, to be harmful to the goodwill of BMW or BMW NA, the reputation of BMW Products, or the marketing of BMW Products;

- (5) Closure or cessation of Center's BMW Car Operations for a period of six (6) consecutive business days, unless such closure or cessation of operation is caused by some event beyond the control of the Center, such as strikes, civil war, riots, fires, floods, earthquakes, or other acts of God, and Center does not immediately resume its customary operations after the cause of the closure or cessation of operations is removed;
- (6) Dissolution or liquidation of Center, if a partnership, corporation, or limited liability company;
- (7) Insolvency or business failure of Center, Center's inability to pay its debts as such debts become due, appointment of a receiver or custodian for all or any part of the property of Center, assignment for the benefit of creditors by Center, the commencement of a case or proceeding under any bankruptcy or insolvency laws by or against Center or any person or entity owning or holding, beneficially or otherwise, a majority or controlling interest in Center, or the subjection of all or any BMW Products to execution or other judicial process;
- (8) Termination of BMW NA's authorization as a BMW importer;
- (9) The conduct, directly or indirectly, of any dealership operation at any location, other than that specifically approved herein for such operation, without the prior written approval of BMW NA;
- (10) Any attempted or actual sale, transfer, or assignment by Center of the Center's assets, any ownership interest in the Center, this Agreement, or any of the rights granted to Center hereunder, or any attempted or actual transfer, assignment, or delegation by Center of any of the responsibilities assumed by it under this Agreement, without the prior written consent and approval of BMW NA, including, but not limited to, any attempted or actual sale, transfer, or assignment of Center's assets or any ownership interest in the Center relating to the conduct of BMW Car Operations hereunder: a) separate and apart from the assets or ownership interests relating to the conduct of BMW SAV Operations under the BMW SAV Center Agreement, if and only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement; b) to a person, partnership, trust, corporation,

or other entity that does not own or operate BMW SAV Operations, if and only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement; or c) to a person or entity that does not meet BMW NA's appointment criteria for a BMW Car Center Agreement;

- (11) Any attempted or actual sale, transfer, or assignment of Center assets, stock, or any other ownership interest that does not comply with the ownership limitations set forth in this Agreement or BMW NA's ownership policies or procedures;
- (12) Any change of a Center's executive management without BMW NA's prior written consent and approval;
- (13) Any attempted or actual pledging of Center stock, any other ownership interest, or this Agreement as security for an obligation;
- (14) The termination of, or any conduct that warrants the termination of, the SAV Center Agreement, if and only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement;
- (15) The loss of licenses, permits, or authorization necessary for Center to perform its obligations under this Agreement; or
- (16) Any dilution or attempt to dilute the BMW brand or trademarks, the infringement of BMW trademarks, or the violation of the trademark provisions in this Agreement or BMW or BMW NA trademark policies or guidelines.

**Termination by BMW
NA on Sixty (60) Days
Notice**

(c) Except to the extent a greater notice period is required by any applicable statute, in which case the notice period shall be deemed to be the period required by such statute, BMW NA shall have the right to terminate this Agreement, on sixty (60) days notice, if any of the following situations exist and BMW NA has previously sent a written notice to Center with respect thereto:

- (1) Any disagreement or personal difficulties between or among any of the persons listed in Article C of the Center Agreement which BMW NA has a reasonable basis to believe would have a materially adverse effect on the conduct of Center's BMW Car Operations or the

presence in the management of Center of any person who BMW NA has a reasonable basis to believe does not have the requisite qualifications for the position;

- (2) Impairment of the reputation or financial standing of Center or any of the persons listed in Article C of the Center Agreement or ascertainment by BMW NA of any facts existing at or prior to the time of execution of this Agreement which tend to impair such reputation or financial standing;
- (3) Any reduction in value of Center's BMW Products or any act on the part of the Center, including without limitation, the existence of any liens or encumbrances upon BMW Products, which to any degree imperils the prospect of full performance or satisfaction of the Obligations of Center to BMW NA; or any change in the financial or other condition of Center which BMW NA has reason to believe unreasonably impairs BMW NA's security or increases its risk hereunder. By way of example, such impairments might include failure to pay for BMW Products in accordance with the terms and conditions of sales and failure to establish and/or maintain for the duration of the Agreement, net working capital and/or adequate exclusive unrestricted wholesale lines of credit;
- (4) The importation, exportation, distribution, or sale of: (a) BMW vehicles which are not originally manufactured or designed for use in the United States; or (b) BMW Products: (i) for resale in the United States; (ii) for resale or use outside the United States; or (iii) in violation of BMW NA's Export Policy.
- (5) Refusal to permit BMW NA to examine or audit Center's accounts and records as provided herein upon receipt by Center from BMW NA of written notice requesting such permission or information;
- (6) Failure of Center to furnish accurate sales or financial information and failure to submit the information and related supporting data in a timely fashion;
- (7) Subject to provisions contained herein with regard to any change in ownership occurring by reason of the death or permanent disability of Center's Owner(s), any change in Center's Owner(s) holding a majority

or controlling ownership interest in Center, or any change, whether voluntary or by operation of law, in the ownership of beneficial interests in Center, or any appointment of Center Operator, without the prior written consent of BMW NA;

- (8) Center's failure to take any actions pursuant to the National Highway Traffic Safety Administration and Motor Vehicle Safety Act of 1966, the Consumer Product Safety Act, the Magnuson-Moss Warranty Act, damage disclosure statutes, or any other law, statute, or regulation pertaining to safety, air pollution, noise control, or warranties to consumers which may be required of motor vehicle dealers or which BMW NA may request in implementing any action undertaken by BMW NA or BMW; or
- (9) Any breach or violation of any material obligation contained in this Agreement or in connection with any transaction between BMW NA and Center, or the failure of Center to satisfy any Deficiency(s) contained in the Improvement Addendum, or any material failure by Center to comply with a requirement established by BMW NA and communicated to Center in accordance with this Agreement.

During the period such a situation as defined in this Paragraph 12 continues to exist, BMW NA may modify its terms of payment with respect to Center to such extent as BMW NA may consider appropriate, irrespective of Center's credit standing or payment record.

**Termination upon
Offering to Enter Into a
New or Amended BMW
Car Center Agreement**

(d) BMW NA may terminate this Agreement at any time by providing Center with ninety (90) days prior notice thereof and offering to enter into a new or amended form of BMW Car Center Agreement with Center in a form being generally offered to eligible or qualified BMW Car Centers in accordance with Article H.

**Termination for Failure
of BMW NA to be
Licensed**

(e) If BMW NA fails to obtain or maintain any license, permit, or authorization necessary for BMW NA's performance of its obligations under this Agreement or if any such license, permit, or authorization is suspended or revoked, and such suspension or revocation continues for a period of six (6) consecutive business days, either party may terminate this Agreement

by providing written notice to the other party.

**No Waiver by Failure to
Terminate**

(f) In the event BMW NA shall be entitled to terminate this Agreement pursuant to the provisions of Paragraph 12 (b) or (c), but shall fail to do so, such failure shall not be considered a waiver of the rights of BMW NA to so terminate the Agreement.

**Termination upon Death
or Permanent Disability**

(g) Death or permanent disability of any of Center's Owners holding a majority or controlling ownership interest in Center or the permanent disability of Center Operator may, at BMW NA's option, result in the termination of this Agreement, upon written notice by BMW NA to Center. BMW NA shall provide such notice within a reasonable time after such death or permanent disability. Termination hereunder shall be effective sixty (60) days from the date of such notice.

**Successor in Event of
Death or Permanent
Disability**

(h) Notwithstanding the provisions in Paragraph 12 (g), in the event of the death or permanent disability of any of the Center's Owners, if the beneficial interest in Center passes directly to the surviving spouse and children, or to any of them, and if:

- (1) Either or both of the persons included in Article C(4) and (5) of the BMW Car Center Agreement remain(s) unchanged; or
- (2) Within ninety (90) days after the death or permanent disability of such Center Owners, arrangements are completed for the assumption of the management of Center by persons acknowledged in writing by BMW NA to be satisfactory to it;

then BMW NA will not terminate the Agreement by reason of such death or permanent disability before the end of twelve (12) months after the death or permanent disability of such Center Owners and, if the Agreement expires sooner than twelve (12) months after the death or permanent disability of such Center Owners, BMW NA will offer to enter into a new Agreement with Center for an extension period equal to the difference between twelve (12) months and the number of days between the date of death or permanent disability of such Center Owners and the expiration date of this Agreement. Such new Agreement will be in substantially the same form as the Agreement then currently offered by BMW NA to its

Centers. Prior to the expiration of such extension period and after completion of BMW NA's evaluation of the performance of Center's management during such period, BMW NA will review with Center the changes, if any, in the management or equity interests of Center required by BMW NA as a condition to renewing or extending the aforementioned new Agreement with Center.

Successor Nominee

(i) Center may amend the Center Agreement to nominate a Successor, designating proposed Center Owners of a Successor Center to be established if this Agreement is terminated because of death or permanent disability. A Successor Nominee, however, must be an individual and shall not be a trust, partnership, corporation, or any other entity. Center may also cancel a Successor Nominee by providing notice to BMW NA that it intends to amend the Center Agreement to delete and/or substitute a new Successor Nominee. The request to amend the Center Agreement or to cancel a Successor Nominee must be executed by all of Center's Owners and be received by BMW NA prior to such death or permanent disability. In the case of the nomination of a Successor, any proposed Center Owners must be acceptable to BMW NA. If a Successor Nominee is not acceptable to BMW NA, Center and BMW NA will create a developmental plan which, if successfully accomplished, will qualify the Successor Nominee to eventually become a Center Owner.

In the case of cancellation of a Successor Nominee, BMW NA agrees to delete the name of the party listed in Article C(6) upon receipt of that notice. If, due to changed circumstances, BMW NA believes or has a reasonable basis to believe the Successor Nominee is or should be disqualified, BMW NA will notify Center that the proposed owner is no longer acceptable. A subsequent Successor Nominee will be designated or a developmental plan will be created by mutual agreement between BMW NA and Center.

If BMW NA has notified Center Owners in writing before the death or permanent disability of such owners that BMW NA does not plan to continue to have a center at Center's location, BMW NA shall accept a Successor Nominee upon the Successor's written commitment to relocate Center's BMW Car Operations within a reasonable time to a mutually acceptable location.

PARAGRAPH 13 - CONTINUATION OF BUSINESS RELATIONS

*Continuation of
Business Relations
After Expiration or Prior
Termination*

(a) This Agreement can be extended or renewed only through an express written instrument to that effect executed in accordance with Article K of the Center Agreement. Any business relations of any nature whatsoever between BMW NA and Center after the expiration of the Agreement, or after its prior termination pursuant to Paragraph 12, without such written instrument, shall not operate as an extension or renewal of the Agreement. Nevertheless, all such business relations, so long as they are continued, shall be governed by terms identical with the provisions of this Agreement.

PARAGRAPH 14 - RIGHTS AND LIABILITIES UPON EXPIRATION OR PRIOR TERMINATION

Cancellation of Pending
Orders and Post
Expiration and
Termination Obligations

(a) Upon the expiration or prior termination of this Agreement all pending orders of Center for BMW Products previously accepted by BMW NA will be considered canceled and Center shall immediately do the following:

- (1) BMW Signs - Center shall remove, at its own expense, all BMW signs displayed at Center's Facility and sell and deliver the same to BMW NA at Center's Facility in suitable condition and packing for transportation. Promptly following such delivery, BMW NA will pay to Center, Center's purchase price for such signs reduced by straight-line depreciation on the basis of a seven-year useful life;
- (2) Discontinuance of Use of BMW Trademarks - Center acknowledges that the license and right to the use of the BMW trademarks ceases upon Center's voluntary resignation or termination as a Center, or upon the expiration of this Agreement, whichever occurs first. In such event, Center shall immediately cease holding itself out as a BMW dealer and refrain from using BMW trademarks and trade names in any fashion whatsoever. Moreover, Center agrees not to use any similar trademarks or trade names and shall refrain from any other activity which states or implies that it is authorized to deal in or service BMW Products. If Center shall refuse or neglect to comply with the provisions of Paragraph 14(a)(1) and (2), Center agrees that BMW and BMW NA shall suffer irreparable harm from the unauthorized use of BMW trademarks and/or trade names. Furthermore, Center shall reimburse BMW NA for all costs and expenses (including attorneys fees) incurred by BMW NA in connection with legal proceedings to require Center's compliance;
- (3) Orders and Files - Center shall transfer to BMW NA, or BMW NA's designee or designees, all orders for sale by Center of BMW Vehicles and Original BMW Parts then pending with Center, all deposits made thereon, whether in cash or in kind, and all of its warranty files and files of prospective customers for BMW Products, or complete copies of all

such files;

- (4) Customer Lists - Center shall provide BMW NA with the correct names, addresses, and telephone numbers of all customers who purchased BMW Vehicles from Center and the service records of all current and active service customers. To the extent they are available for such customers, Center will provide BMW NA with correct facsimile numbers and e-mail addresses for the customers; and
- (5) Literature - Center shall deliver to BMW NA at BMW NA's place of business, or to BMW NA's designee or designees, free of charge, any and all technical or service literature, advertising, other printed material, compact discs, diskettes, and any other technological medium relating to BMW Products then in Center's possession which were acquired or obtained by Center from BMW NA, such as, for example, sales instruction manuals and promotional materials.

*Purchase of Center's
Inventory of BMW
Products by BMW NA*

(b) Within ninety (90) days of the expiration or prior termination of this Agreement and provided further that all of Center's Obligations to BMW NA have been paid or satisfied in full, BMW NA, upon Center's compliance with the provisions hereinafter set forth, will purchase from Center and Center will sell and deliver to BMW NA, the following:

- (1) New BMW Vehicle Inventory - BMW NA will purchase all new, unused, undamaged, and unmodified BMW Vehicles then unsold in Center's inventory which are in first-class salable condition and of the then current model year or the immediately preceding model year, provided that such BMW Vehicles were purchased by Center from BMW NA (or in the ordinary course of business from other Centers). The price for such BMW Vehicles shall be the Net Purchase Price at which they were originally purchased from BMW NA;
- (2) New Original BMW Parts Inventory - BMW NA will purchase all new, unused, and undamaged Original BMW Parts (other than the special BMW tools specifically covered in Paragraph 14(b)(3) below), in original packaging, not classified as obsolete or "special" by BMW NA, and listed in the then current BMW Parts Price List, then unsold in Center's inventory which are in first-class, salable condition; provided such Original BMW Parts were purchased by Center from BMW NA. The price at which BMW NA will purchase such Original BMW Parts

shall be the price last established by BMW NA under the BMW NA standard parts order for the sale of identical Original BMW Parts to centers, less a 15% handling and restocking charge; and

- (3) Special BMW Tools - BMW NA will purchase all required special BMW tools applicable to BMW Vehicles including electronic testing equipment and computer hardware and software, if any, provided that such tools were purchased by Center from BMW NA, and provided any sets of such tools are complete and no parts or components are missing or otherwise unusable. The price at which BMW NA will purchase such special BMW tools shall be reasonably determined by BMW NA, but in no event will such price be less than Center's purchase price for such tools reduced by straight-line depreciation on the basis of a three-year useful life.

Any and all items to be sold by Center to BMW NA pursuant to the provisions of Paragraph 14(b)(2) and (3) shall be delivered by Center to BMW NA at Center's Facilities in suitable condition and boxed and/or packed for transportation, which transportation shall be at BMW NA's expense. In the event Center fails to so box and pack any Original BMW Parts or special BMW tools to be sold hereunder, BMW NA may do so and deduct the expenses of such boxing and packing from the applicable price thereof.

As a condition precedent to the obligations of BMW NA under Paragraph 14(b) to repurchase any BMW Vehicles, Original BMW Parts, or special BMW tools, Center shall permit BMW NA and BMW NA's designee or designees, at such time and for such periods of time as BMW NA reasonably shall determine, to enter Center's Facility for the purpose of inspection and/or taking an inventory of all or any part of Center's stock of BMW Vehicles, Original BMW Parts, and special BMW tools. At the request of BMW NA, Center shall comply in all respects with the provisions of all applicable bulk sales acts or similar statutes protecting a transferee of personal property with respect to liabilities of the transferor.

In making payments in accordance with Paragraph 14(b), BMW NA reserves the right to do the following:

- (i) To pay any financial institution retaining a security interest in any

of the items to be repurchased by BMW NA such sums as are necessary to obtain good, unencumbered, and marketable title to such items;

(ii) To pay any claimant, in accordance with any applicable statute, such sums as may be necessary to acquire good, unencumbered, and marketable title, free of any interest, right or claim of such claimant, to the items being repurchased by BMW NA; and

(iii) To set off the amount due Center including, without limitation, amounts due Center from BMW NA for the repurchase of BMW Products hereunder against any amount which may be due BMW NA from Center, including, without limitation, reimbursement of expenses incurred by BMW NA pursuant to (i) or (ii) above.

Notwithstanding anything to the contrary contained in Paragraph 14, in no event will BMW NA be required to purchase any item from Center unless Center is able to convey title to such item free and clear of all liens, claims, encumbrances, and security interests.

PARAGRAPH 15 - OWNERSHIP CHANGES AND TRANSFERS OF AGREEMENT

*Transfer, Sale, or
Assignment of
Agreement by Center*

(a) (1) In view of the nature, purposes, and objectives of BMW NA and this Agreement, and the differences in operating requirements among dealerships of differing sizes and types of markets, BMW NA expressly reserves the right to select the centers with whom it will enter into such agreements so as to maintain a high quality network of centers. Furthermore, Center agrees that BMW NA has the right to approve or decline to approve any prospective purchaser based on his, her, or its character, reputation, automotive experience, performance (including, but not limited to, customer satisfaction, market penetration, and profitability), potential impact on the BMW brand, management, compliance with BMW NA's ownership policies, procedures, and limitations, compliance with the law and agreements, capital, financial qualifications, or other qualifications for appointment as an owner of a center.

(2) Center shall not transfer, sell, or assign, or attempt to transfer, sell, or assign, the Center's assets, any ownership interest in the Center, or this Agreement, or sell or transfer any right or delegate any duty, obligation, or responsibility of Center under this Agreement, without the prior written consent and approval of BMW NA. If a transfer, sale, or assignment of a Center's stock or any other ownership interest or assets is approved by BMW NA, then BMW NA shall offer the transferee or assignee of Center the right to enter into a new Agreement in substantially the same form as the Agreement then currently offered by BMW NA to its Centers.

(3) Center agrees that it shall not sell or transfer Center's assets or any ownership interest in its BMW Car Operations hereunder separate and apart from the assets or ownership interests in its BMW SAV Operations, if and only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement.

Ownership Policies and Procedures

(b) BMW NA fully incorporates by reference its ownership policies and procedures into this Agreement.

Ownership Limitations

(c) (1) The combined SPG of all the BMW centers owned directly or indirectly by any individual, partnership, trust, corporation, or other entity cannot exceed 10% of the SPG of all BMW centers in the United States at any time. BMW NA can withhold its consent to any change of ownership that would take any individual's, partnership's, trust's, corporation's, or other entity's direct or indirect ownership interest above 10%. Center acknowledges and agrees that BMW NA's 10% ownership limit is fair and reasonable.

(2) In any metropolitan area defined by BMW NA as a multiple point market no individual, partnership, trust, corporation, or any other entity can directly or indirectly own an interest in more than 50% of the BMW centers in the market. BMW NA can withhold its consent to any change of ownership that would violate this Paragraph. Center acknowledges and agrees that the ownership limit described in this Paragraph is fair and reasonable.

PARAGRAPH 16 - FACILITIES AND SATELLITES

**Facility and Satellite
Authorization**

(a) Center shall operate its BMW Car Operations only at the authorized locations listed in Article D of the Agreement. Any proposed change in the Center's authorized locations, including the establishment or relocation of satellite locations, requires BMW NA's prior written consent. To the extent that a proposed change is approved and involves the establishment or relocation of a satellite of the Center authorized to operate under this Agreement, the location of the satellite shall be listed in Article D of the Agreement and shall be identified as a satellite. Accordingly, such a listing and identification constitutes authorization to operate a satellite under this Agreement and a new Center Agreement shall not be issued. Center agrees that satellite locations are not necessarily permanent and that Center shall discontinue operations at a satellite upon receipt of sixty (60) days written notice from BMW NA. Center further agrees that the termination or withdrawal of approval of a satellite does not constitute the termination or failure to renew this Agreement.

**Approved Locations for
Center Facilities**

(b) At all times hereunder, Center shall conduct its BMW Center Operations hereunder in conjunction with, and at the approved locations and center facilities for, its BMW SAV Operations, if and only if the Center is also an authorized dealer of BMW Sports Activity Vehicles pursuant to the separate and distinct SAV Center Agreement.

Facilities Compliance

(c) Recognizing that Center's Facilities affect Center's ability to discharge properly its responsibilities under this Agreement and the Center Operating Requirements Addendum, Center will ensure that Center's Facilities comply with the applicable provisions of this Agreement, including such reasonable requirements and standards as BMW NA may prescribe from time to time.

Consent

(d) Center must obtain BMW NA's prior written approval for all locations and facilities from which pre-owned BMWs are sold, including certified pre-owned BMWs. BMW NA's approval of such locations will not be unreasonably withheld.

PARAGRAPH 17 - INDEMNIFICATION

**Indemnification by BMW
NA**

(a) Subject to the provisions of Paragraph 17, BMW NA shall indemnify and hold Center harmless against any judgment which may be rendered against Center, plus reasonable attorneys fees and court costs, resulting from lawsuits seeking monetary damages commenced against Center by third parties concerning:

- (1) Bodily injury or property damage (including damage to BMW Products) claimed to have been caused by an alleged defect in the design, manufacture, or assembly of BMW Products; provided, however, that any claimed defect in manufacture or assembly was not such as should have been detected by Center in a reasonable inspection of the BMW Products, whether in the performance of the Center's pre-delivery inspection and conditioning, during the course of repair and/or maintenance, or otherwise;
- (2) Failure of BMW Products to conform, because of changes in standard equipment or material component parts, to any description thereof set forth in advertisements or product brochures made available to Center by BMW NA and allegedly relied on by the first retail purchaser thereof, unless Center shall have received written notice of such changes from BMW NA prior to the date of delivery of the affected BMW Product to such purchaser; or
- (3) Any damage to BMW Products repaired by BMW NA prior to the time any affected BMW Product is delivered to the Center, unless Center shall have received notice of such damage and repair from BMW NA prior to the date of delivery of the affected BMW Product to the first retail purchaser thereof.

In the event that any lawsuit making allegations as set forth in (1) through (3) above is brought naming Center as a defendant, BMW NA will, following receipt of notice as provided in subparagraph (c) of this Paragraph, undertake at its sole expense and through counsel selected or approved by

BMW NA, the defense of said action on behalf of Center.

BMW NA is specifically authorized by Center to settle or to continue to defend any such lawsuit brought against Center, provided that BMW NA shall be solely liable for the payment of the amount of any settlement which it effects or judgment that is rendered.

Should BMW NA for any reason refuse to undertake the defense of Center when it is otherwise obligated to do so under this subparagraph, Center may conduct its own defense and, in that event, BMW NA's liability shall be limited solely to the costs of such defense, including reasonable attorneys fees, court costs, and the amount of any judgment or final settlement paid by Center (provided, however, that Center shall notify BMW NA in writing within twenty (20) days of such judgment or settlement).

BMW NA shall have the right to decline to accept Center's defense or, after accepting the defense but prior to trial, to tender the defense back to Center, and Center shall accept such tender if BMW NA reasonably concludes that the allegations or claims being pursued are no longer those set forth in (1) through (3) above.

**Indemnification by
Center**

(b) Subject to the provisions of Paragraph 17, Center shall indemnify and hold BMW NA harmless against any judgment which may be rendered against BMW NA, plus reasonable attorneys fees and court costs, resulting from lawsuits seeking monetary damages commenced against BMW NA by third parties concerning:

- (1) Center's alleged failure to perform or negligent or willfully malfeasant performance of: (i) the service obligations assumed by it pursuant to Paragraph 6 of this Agreement; or (ii) any maintenance or repair service on BMW Products or such other motor vehicles or products as may be sold or serviced by Center;
- (2) Center's alleged breach of any contract between Center and Center's customer; provided, however, that the breach was not caused by any act or omission on the part of BMW NA which BMW NA unreasonably

failed to notify Center of prior to the date of Center entering into the contract with its customer; or

- (3) Center's alleged independent warranties, misleading statements, misrepresentations, or unfair or deceptive acts or practices, whether through advertisements or otherwise, affecting any individual or entity; provided, however, that the alleged warranties, statements, representations, deceptive acts or practices or advertisements are not based on information or material produced or supplied by BMW NA and are not subsequently superseded or withdrawn by BMW NA upon notification to Center.

In the event that any lawsuit making allegations as set forth in (1) through (3) above is brought naming BMW NA as a defendant, Center will, following receipt of notice as provided in Paragraph 17(c), undertake at its sole expense and through counsel selected by Center and approved by BMW NA, the defense of said action on behalf of BMW NA. Center is specifically authorized by BMW NA to settle or to continue to defend any such lawsuit brought against BMW NA, provided that Center shall be solely liable for the payment of the amount of any settlement which it effects or judgment that is rendered.

Should Center for any reason refuse to undertake the defense on behalf of BMW NA when it is otherwise obligated to do so under this subparagraph, BMW NA may conduct its own defense and, in that event, Center's liability shall be limited solely to the costs of such defense including reasonable attorneys fees, court costs, and the amount of any judgment or final settlement paid by BMW NA (provided, however, that BMW NA shall notify Center in writing within twenty (20) days of such judgment or settlement).

Center shall have the right to decline to accept BMW NA's defense or, after accepting the defense but prior to trial, to tender the defense back to BMW NA, and BMW NA shall accept such tender, if Center reasonably concludes that the allegations being pursued are no longer those set forth in (1) through (3) above.

Notification

(c) Whenever a lawsuit is commenced against either BMW NA or Center or both of them, and either party seeks indemnification from the other, each shall, within fifteen (15) days after service of the complaint notify the other in writing of any request to assume its defense and to indemnify it, and shall provide at the time copies of any pleadings or other court papers which have been served upon the party giving notice, as well as all information then available regarding the first customer, the plaintiff, and the circumstances giving rise to the suit.

IN THE EVENT THIS PROVISION IS FOR ANY REASON NOT COMPLIED WITH, SUBPARAGRAPHS (a) AND (b) OF PARAGRAPH 17 SHALL NOT APPLY FOR PURPOSES OF THAT LAWSUIT OR WITH RESPECT TO ANY CLAIM OR LAWSUIT ARISING OUT OF ALLEGATIONS OR TRANSACTIONS ANTEDATING THE FIRST CLAIM OR LAWSUIT INVOLVING THE AFFECTED BMW PRODUCT.

The request to assume the defense and to indemnify shall be accepted or rejected, in writing, by the party to whom it is delivered within thirty (30) days following its receipt. Prior to receipt of a response to its request, each party agrees to take all reasonable steps to ensure that the defense to the action is in no way prejudiced, whether by action or inaction. If the request is accepted, the party making the request shall cooperate fully in the defense of the suit in such manner and to such extent as the party assuming the defense may reasonably require; provided, however, that subparagraphs (a) and (b) of Paragraph 17 shall be applicable commencing with the date on which the request is accepted and any expenses or other obligations incurred prior to such acceptance by the party making the request shall be borne solely by such party.

**Allegations Involving
Both BMW NA and
Center**

(d) If at any time in a lawsuit it is alleged that there is liability on the part of both BMW NA (on any or all of the bases set forth in Paragraph 17(a)) and Center (on any or all of the bases set forth in Paragraph 17(b)), each party shall be responsible for its own defense, including costs and attorneys fees, unless at any time after the commencement of such suit one party offers to undertake the total defense and the other party agrees thereto in writing, in which event the provisions of subparagraphs (a) and (b) hereof shall be controlling, as appropriate to the circumstances of such

agreement.

The responsibility of BMW NA or Center for its own defense pursuant to this subparagraph (d), or pursuant to any other circumstances not within the scope of Paragraph 17, shall in no way affect or alter the legal rights, if any, either may have to indemnification or contribution from the other.

PARAGRAPH 18 - MISCELLANEOUS PROVISIONS

**Approval or Consent by
BMW NA**

(a) Any approval or consent given by BMW NA must be in writing and signed by duly authorized representatives of BMW NA.

Divisibility

(b) If any provision of this Agreement contravenes or is prohibited by the laws of any state or other jurisdiction which are held to be applicable to this Agreement, such provision shall be limited to the extent necessary so that it will not render this Agreement invalid, unlawful or unenforceable, in whole or part, under such laws, but all other provisions of this Agreement shall remain in full force and effect.

**Termination of Prior
Agreements**

(c) This Agreement terminates and supersedes all prior written or oral agreements, if any, between BMW NA and Center relating to the subject matter hereof, except with respect to any trade indebtedness which may be owing by either BMW NA or Center to the other and except that this Agreement shall not operate to cancel any of Center's unfilled orders with BMW NA for any BMW Products placed with BMW NA pursuant to the provisions of any agreement terminated or superseded by this Agreement.

Notices

(d) Any notices under or pursuant to the provisions of this Agreement shall be directed to the respective addresses of the parties as stated in the Center Agreement or, if either of the parties shall have specified another address by notice to the other party in writing, to the address last specified. The parties shall advise each other promptly, in writing, of any change of address.

No Implied Waivers

(e) Except as otherwise provided in this Agreement, the failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself.

**Center Not an Agent and
Disclaimer of Further
Liability by BMW NA
and BMW**

(f) Center is not an agent of BMW NA, and BMW NA owes no fiduciary duty to Center. Center will conduct its BMW Car Operations on its own behalf and for its own account. Center has no power or authority to act for or to bind BMW NA and/or BMW and shall not represent directly, indirectly, or by implication that the Center has any such power or authority. Furthermore, except as expressly provided in this Agreement, BMW NA will not be liable for any expenditure made or incurred by Center in connection with Center's performance of its obligations pursuant to the Agreement.

Center agrees that it has no rights, without limitation, arising from or in connection with any agreement between BMW NA and any other BMW center and that Center is not a third party beneficiary of any such agreement. In addition, nothing herein grants Center any rights to enforce any such agreement. Center also agrees that no third party shall have any enforceable rights under this Agreement.

Accounts Payable

(g) All monies or accounts due Center shall be net of Center's indebtedness to BMW NA, its subsidiaries, and affiliates. BMW NA may: (1) deduct any amounts due or to become due from Center to BMW NA, its subsidiaries, and affiliates; and/or (2) set-off and/or recoup any amounts due from Center from any amounts in the possession of, or being held by, BMW NA, its subsidiaries, and affiliates, relating to this Agreement or any other agreement between Center and any of those parties.

**BMW NA's Continuing
Security Interests**

(h) Except as specifically provided by any other provision of this Agreement, the security interests granted to BMW NA hereunder shall not be affected by any provision in any other instrument, including, but not limited to, invoices, purchase orders, purchase order acknowledgments, and other forms; and the terms of this Agreement relating to such security interests may only be modified, amended, or changed by a writing signed by both parties specifically referring to this Agreement.

**Assignment of BMW
NA's Security Interests**

(i) BMW NA may assign the security interests granted to it under this Agreement or any part thereof, including its security interests in particular items of Collateral and, upon notifying the Center, the assignee shall be entitled to the full performance of the covenants, rights, and remedies

contained in Paragraph 10 of the Agreement in so far as they apply to the Collateral assigned. Center will not assert any claims, defenses, offsets, or recoupments against the assignee that it may have against BMW NA.

**Limitations Re Center
Stock and Assets**

(j) Center agrees that it shall not pledge its stock or any other ownership interests as security for any obligations to individuals or entities, including, but not limited to, corporations, partnerships, trusts, and financial institutions. Center, however, may pledge its assets, subject to the security interests provided for in this Agreement, as security to individuals or entities, including, but not limited to, corporations, partnerships, trusts, and financial institutions (the term assets as used herein excludes stock and all other ownership interests). Center further agrees that this Agreement is not an asset of the Center and may not be pledged as security for any obligation.

**BMW NA's Right to
Specific Performance**

(k) Since Center's performance of its obligations under this Agreement is of such a nature that it is impossible to measure, in money, the damages which will be suffered by BMW NA in the event Center should fail to perform any of its obligations, Center agrees that, in the event of any such failures or performance on its part, BMW NA shall be entitled to maintain an action or proceeding to compel the specific performance by Center of these obligations and Center agrees not to urge in any such action or proceedings the claim or defense that BMW NA has an adequate remedy at law.

Reservation of Rights

(l) BMW NA reserves any and all rights not expressly set forth in this Agreement.

Headings

(m) The headings contained in this Agreement have been inserted for convenient reference only and shall not in any way affect the construction, interpretation, or meaning of the text.

**Entire Agreement and
Representations**

(n) This Agreement contains the entire agreement between BMW NA and Center. Center acknowledges that no representation or statement has been made to it on behalf of BMW, BMW NA and/or any agents, representatives, or employees of either BMW or BMW NA that in any way tend to change or modify any of the terms or provisions of the Agreement

or that in any manner prevents this Agreement from becoming effective. Center further acknowledges that there is no other agreement or understanding, except those specifically provided for in this Agreement, either oral or written, between Center and BMW and/or BMW NA affecting this Agreement or relating to the subject matter hereof.

New Jersey Law

(o) This Agreement shall be deemed to have been entered into in the State of New Jersey and shall be construed and interpreted in accordance with New Jersey law. Furthermore, any questions as to the validity of this Agreement, the performance of any of its terms and conditions, or of any contractual rights or obligations of the parties to this Agreement, shall be governed by and resolved in accordance with New Jersey law.